No. 21,624

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

---

P. S. SEYMOUR-HEATH,

Appellant

v.

UNITED STATES OF AMERICA and GEORGE T. GOGGIN,
TRUSTEE IN BANKRUPTCY, ETC.,

Appellees

---

ON APPEAL FROM THE ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

---

# BRIEF FOR THE UNITED STATES

---

MITCHELL ROGOVIN,
Assistant Attorney General.

LEE A. JACKSON,
ROBERT J. CAMPBELL,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

Of Counsel:

WILLIAM M. BYRNE, JR.,
United States Attorney.

LOYAL E. KEIR,
Assistant United States Attorney.

No. 21,624

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

---

P. S. SEYMOUR-HEATH,

Appellant

v.

UNITED STATES OF AMERICA and GEORGE T. GOGGIN,
TRUSTEE IN BANKRUPTCY, ETC.,

Appellees

---

ON APPEAL FROM THE ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

---

# BRIEF FOR THE UNITED STATES

---

MITCHELL ROGOVIN,
Assistant Attorney General.

LEE A. JACKSON,
ROBERT J. CAMPBELL,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

Of Counsel:

WILLIAM M. BYRNE, JR.,
United States Attorney.

LOYAL E. KEIR,
Assistant United States Attorney.

# I N D E X



## C I T A T I O N S

Cases:

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

---

No. 21,624

P. S. SEYMOUR-HEATH,

Appellant

v.

UNITED STATES OF AMERICA and GEORGE T. GOGGIN,
TRUSTEE IN BANKRUPTCY, ETC.,

Appellees

---

ON APPEAL FROM THE ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

---

# BRIEF FOR THE UNITED STATES

---

## OPINION BELOW

The District Court wrote no opinion. Its order (I-R. 57)[1/] adopting the findings of the Referee in Bankruptcy is not officially reported.

---

1/ "I-R." references are to Volume I of the Transcript of Record, as supplemented on January 19, 1968.

## JURISDICTION

This appeal involves the allowability in bankruptcy of federal income tax and renegotiation claims against Trans-Pacific Corporation and its wholly-owned subsidiary, Communications Equipment Corporation for the taxable year ending September 30, 1944. The appellant is the residual beneficiary of these two corporations. (I-R. 86.) The orders of the Referee in Bankruptcy were issued on December 29, 1965 (I-R. 24-27) and affirmed by the District Court on October 31, 1966 (I-R. 57). Jurisdiction was conferred on the District Court by 28 U.S.C., Section 1334. Within sixty days thereafter, on November 29, 1966, a notice of appeal was filed. (I-R. 58.) Jurisdiction is conferred on this Court by 28 U.S.C., Section 1291.

## QUESTIONS PRESENTED

1. Whether Section 403 of the Renegotiation Act, which vests exclusive jurisdiction with the Tax Court to review final orders of the Renegotiation Board, precludes a bankruptcy court from reviewing the merits of a final order of the Renegotiation Board.

2. Whether the claims of the United States are barred by reason of laches.

## STATUTE INVOLVED

Renegotiation Act, c. 247, 56 Stat. 226, 245, as amended by Sec. 701(b), Revenue Act of 1943, c. 63, 58 Stat. 21, 78:

Sec. 403. * * *

* * *

(c)(1) Whenever, in the opinion of the Board, the amounts received or accrued under contracts with the Departments and

subcontracts may reflect excessive profits, the Board shall give to the contractor or subcontractor, as the case may be, reasonable notice of the time and place of a conference to be held with respect thereto. The mailing of such notice by registered mail to the contractor or subcontractor shall constitute the commencement of the renegotiation proceeding. At the conference, which may be adjourned from time to time, the Board shall endeavor to make a final or other agreement with the contractor or subcontractor with respect to the elimination of excessive profits received or accrued, and with respect to such other matters relating thereto as the Board deems advisable. Any such agreement, if made, may, with the consent of the contractor or subcontractor, also include provisions with respect to the elimination of excessive profits likely to be received or accrued. If the Board does not make an agreement with respect to the elimination of excessive profits received or accrued, it shall issue and enter an order determining the amount, if any, of such excessive profits, and forthwith give notice thereof by registered mail to the contractor or subcontractor. In the absence of the filing of a petition with the Tax Court of the United States under the provisions of and within the time limit prescribed in subsection (e) (1), such order shall be final and conclusive and shall not be subject to review or redetermination by any court or other agency. * * *

* * *

(e)(1) Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor may, within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing of the notice of such order under subsection (c) (1), file a petition with the Tax Court of the United States for a redetermination thereof. Upon such filing such court shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination shall not be reviewed or redetermine by any court or agency. The court may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the Board. A proceeding before the Tax Court to finally determine the amount, if any, of excessive profits shall not be treated as a proceeding to review the determination of the Board, but shall be treated as a proceeding de novo. * * *

* * *

(50 U.S.C. Appendix 1964 ed., Sec. 1191.)

STATEMENT

On October 29, 1946, the proceedings leading to the instant appeal were initated by the filing of petitions under Section 322 of Chapter XI of the Bankruptcy Act against Trans-Pacific Corporation and three of its wholly-owned subsidiaries, Communications Equipment Corporation, Columbia Stamping and Manufacturing Corporation, and Neubart Stamping and Manufacturing Corporation. In these proceedings, the United States invoked substantial tax and renegotiation claims against all four companies. Through the efforts of the Trustee in Bankruptcy and others, the Government claims against Columbia and Neubart were settled. But similar settlement efforts with respect to Trans-Pacific and Communications Equipment were unsuccessful. (I-R. 85.)

Both Trans-Pacific and Communications Equipment were adjudicated bankrupts on February 28, 1947. (I-R. 85.) The protracted negotiations and litigation that followed concerning the Government's claims against these two companies culminated in two orders and two judgments of the Bankruptcy Referee in favor of the Government (I-R. 24-27), which have subsequently been affirmed by the District Court (I-R. 57):

| | |
|---|---|
| Trans-Pacific Corporation | |
| Tax claims | $ 11,194.88 |
| Renegotiation claims | $110,517.15 2/ |
| Communications Equipment Corporation | |
| Tax claims | $128,477.80 |
| Renegotiation claims | $246,537.75 |
| | $496,727.58 |

The appellant in this case, P. S. Seymour-Heath, is the residual beneficiary of any assets remaining after all debts of the bankrupts are satisfied. Mr. Seymour-Heath acquired this status by an order of the Referee in Bankruptcy 3/ on October 20, 1959. (I-R. 15.) Such order resulted from conflicting claims as to the ownership of stock in American Pumice Company--Mr. Seymour-Heath claiming that he owned all of the Pumice stock while the Trustee in Bankruptcy claimed that Pumice was a wholly-owned subsidiary of Trans-Pacific and, accordingly, its assets should be used for the

---

2/ The amount of the order against Trans-Pacific was $357,054.90 but this included the $246,537.75 renegotiation claim against Communications Equipment since under a 1945 agreement Trans-Pacific guaranteed the debt of its subsidiary. (I-R. 89,91.)

3/ During the pendency of these bankruptcy proceedings there were five different referees. The referee issuing the above order was John Bergener. The last referee, whose findings are here being contested, was James Moriarty.

benefit of Trans-Pacific's creditors.[4/] The order transferred the American Pumice stock to the Trustee in Bankruptcy and, at the same time, made Mr. Seymour-Heath the residual beneficiary of the assets of both Trans-Pacific and American Pumice. (I-R. 86.) In this capacity, this Court has allowed Mr. Seymour-Heath a veto power over settlement negotiations between the Government and the Trustee in Bankruptcy. See P. S. Seymour-Heath v. George T. Goggin, decided January 10, 1968 (C.A. 9th, No. 21,868).

Our effort in summarizing the happenings of more than twenty years of bankruptcy proceedings will, as is appropriate, be limited to those facts necessary to resolve the two issues raised in the appellant's brief. Accordingly, the following are the relevant facts, which facts do not appear to be in dispute:

TAX CLAIMS

The initial federal tax claims against the bankrupt corporations, Trans-Pacific and Communications Equipment, were filed on December 18, 1946. (I-R. 87,88.)

---

4/ The only asset of any value available to meet the Government's claims herein is a right of reimbursement arising out of the Government's condemnation actions filed in 1944 and 1945 against certain mineral lands owned by American Pumice. (I-R. 85-86.) On November 24, 1964, the District Court awarded judgment in favor of American Pumice totaling $167,250. (I-R. 30.) The Government is presently appealing the decision to this Court (United States v. American Pumice Co. (No. 20,290)).

The initial claim against Trans-Pacific, in the amount of $66,436.33 and covering its fiscal year ending February 28, 1945, was subsequently reduced to the finally allowed figure of $11,194.88 by a combination of a second Government audit, an allowance of loss carrybacks for 1946 and 1947, certain renegotiation credits, and the referee's resolution of several disputed issues in favor of Trans-Pacific. (I-R. 73-79,88.) The complex details of this reduction process are recounted by the referee in his findings but are omitted here because the appellant does not raise any issue with respect to those findings.

Communications Equipment reported an excess profits tax liability of $261,787.25 on its return for the fiscal year ending September 30, 1944. (I-R. 80.) The total Government tax claim as amended on April 19, 1955 totaled $335,522.42. This indebtedness was reduced by a payment of $127,307.34 and a subsequent computation to a final amended claim of $128,477.80 that was filed on April 6, 1961. (I-R. 87.) The taxpayer initially attempted to contest this liability by attempting to make use of certain tax credits due to unusual factors arising out of the war effort pursuant to Section 722 of the Internal Revenue Code of 1939. An application for relief was filed under that section on March 17, 1945 (I-R. 81), but such application was rejected by the then Bureau of Internal Revenue on January 14, 1946 (I-R. 88). No subsequent attempt was made to seek review of that rejection in the Tax Court. Moreover, no evidence in

support of the application of Section 722 was offered to the referee. The amended Government claim of $128,477.80 was accordingly allowed in full. (I-R. 82, 88.) Again, further details are unnecessary because the appellant raises no question as to the correctness of this tax claim in his brief.

RENEGOTIATION CLAIMS

On November 26, 1945, Communications Equipment and the Government entered into an agreement with respect to that corporation's renegotiation liability fixing the amount of the liability at $169,499.30 for fiscal year ending September 30, 1944, such agreement being executed by Mr. Seymour-Heath as the chairman of the board of directors of Communications Equipment.[5/] As part of the settlement the parent corporation, Trans-Pacific, guaranteed payment of the agreed sum to the Government. (I-R. 71, 89.)

On May 23, 1947, the War Contract Price Adjustment Board, acting under the authority of the Renegotiation Act, c. 247, 56 Stat. 226, 245, as amended (50 U.S.C. Appendix 1964 ed., Sec. 1191) made a unilateral determination that Communications Equipment was further liable in the amount of $70,000 for contract renegotiation

---

5/ The interest on this unpaid amount to and including October 28, 1946, the day before bankruptcy proceedings were instituted, added another $7,038.45 to the taxpayer's bill. (I-R. 71.)

during the fiscal year ending September 30, 1945 (I-R. 71, 89), and that Trans-Pacific was itself independently liable for contract renegotiation in the amount of $110,517.15 (I-R. 90).

The Government filed its first claim against Communications Equipment with the Trustee in Bankruptcy on January 29, 1947, and later filed several amended claims, the final one being filed on August 5, 1960, in the amount of $246,537.75. (I-R. 89.) The Government's first renegotiation claim against Trans-Pacific in the amount of $1,009,720.08 was filed on July 3, 1947, but subsequent amendments reduced the total to $357,054.90, the final amended claim being also filed on August 5, 1960.[6/] (I-R. 90.)

Neither taxpayer sought review in the Tax Court with respect to any of the renegotiation determinations of the War Contract Price Adjustment Board within the 90 days provided for that purpose in the Renegotiation Act. For this reason, the referee refused to reopen the merits of the Board's decisions and allowed the Government already-adjudicated claims in the amounts as finally amended. (I-R. 71-72, 89-90.)

---

6/ This $357,054.90 is overlapping to the extent of Communications Equipment's $246,537.75 renegotiation liability. See footnote 2, supra.

## SUMMARY OF ARGUMENT

This appeal involves a dispute as to the validity of certain federal renegotiation claims, filed with the Trustee in Bankruptcy, both with respect to their finality and the timeliness of their enforcement. Although numerous other errors are assigned in the appellant's designation of points on appeal, only these two are asserted on brief, neither of which has any merit.

Appellant's attempts to relitigate before the Referee in Bankruptcy the merits of a final action of the War Contracts Price Adjustment Board must fail by the plain language of the federal statute creating that Board. The statute provides for exclusive review of the Board's orders in the Tax Court. And both the Supreme Court and this Court have so interpreted it.

Appellant's further attempt to apply the doctrine of laches against the Federal Government must also fail. Not only is this doctrine inapplicable against the sovereign but the appellant has not supplied even a single instance where the Government has caused an inexcusable delay in enforcing its claims to his prejudice, both preconditions to applying laches against anyone.

Accordingly, the action of the District Court in approving the referee's allowance of the Government's tax and renegotiation claims should be sustained by this Court.

## ARGUMENT

### THE DISTRICT COURT'S ORDER CORRECTLY ALLOWED TAX AND RENEGOTIATION CLAIMS OF THE UNITED STATES TOTALING $496,727.58 AS FIXED BY THE REFEREE IN BANKRUPTCY

This appeal challenges the correctness of the bankruptcy referee's determinations relating to the federal tax and renegotiation liability of Trans-Pacific and its wholly-owned subsidiary, Communications Equipment. Since the appellant in this case, P. S. Seymour-Heath, is the residual beneficiary of the assets of these bankrupt corporations and not a competing creditor, there is no issue as to priority. Thus, this Court need only consider the validity of the several federal claims allowed by the referee.

On brief (pp. 8-11) the appellant offers two reasons for reversal. He contends that he should be given an opportunity in the bankruptcy proceedings to relitigate the merits of the renegotiation liability. He also urges that the United States be barred from enforcing its, now stale, renegotiation claims by reason of laches. We will demonstrate that both of these arguments are equally without merit, as they have been consistently rejected by the Supreme Court, this Court and every other court having occasion to consider them. Indeed, appellant has been unable to cite a single case which supports either of his arguments.

Although the appellant has enumerated additional grounds for reversal in his designation of points on appeal (I-R. 63-64), his brief is limited to the above two grounds. By failing to argue, or even mention the other grounds in his brief, the appellant must be held to have abandoned them. Moore v. Tremelling, 100 F. 2d 39, 43 (C.A. 9th, 1938); Bank of Eureka v. Partington, 91 F. 2d 587 (C.A. 9th, 1937); Mutual Life Ins. Co. v. Wells Fargo Bank and Trust Co., 86 F. 2d 585 (C.A. 9th, 1936). See also Rules of the United States Court of Appeals for the Ninth Circuit, Rule 18(2)(d). Accordingly, the appellant necessarily concedes the correctness of claims not within the scope of the two grounds for reversal stated in his brief, to wit, the tax claims against each corporation. Our brief, therefore, will only deal with the contested renegotiation liability.

A. The Bankruptcy Court lacks jurisdiction either to determine the merits of a renegotiation claim in the first instance or to review a renegotiation claim already adjudicated before the Renegotiation Board

The renegotiation claims that the Government seeks to uphold in this Court arose under the Renegotiation Act, 2. 247, 56 Stat. 226, 245, as amended (50 U.S.C. Appendix 1964 ed., Sec. 1191), supra. That Act provided for the creation of a War Contracts Price Adjustment Board (hereinafter referred to as Renegotiation Board) to which was delegated the authority to determine the existence of excess war profits in Government contracts. Pursuant to this grant

of authority the Renegotiation Board determined on May 23, 1947, that Trans-Pacific owed the Government $110,517.15 and Communications Equipment owed the Government $70,000. (I-R. 89, 90.) The remaining renegotiation liability against these bankrupt corporations arose out of an agreement with the Government whose validity went unchallenged in the appellant's brief.7/

The Renegotiation Act further provides for a review de novo before the Tax Court of the Renegotiation Board's determinations within 90 days of such determinations. Section 1191(e)(1). The instant taxpayers did not seek this available review. As a consequence the Act provides, as follows (Section 403(c)(1)):

> In the absence of the filing of a petition with the Tax Court of the United States under the provisions of and within the time limit prescribed in subsection (e) (1), such order [of the Renegotiation Board] shall be final and conclusive and shall not be subject to review or redetermination by any court or other agency.

This Court has unanimously held that the above language vests exclusive jurisdiction in the Tax Court to review orders of the Renegotiation Board, and that, accordingly, District Courts cannot

---

7/ Under the statute there are two ways in which the Board can determine liability--by an agreement with the contractor or by a unilateral order. Section 403(c)(1). The Board's action here was by unilateral order. The agreement was one between the Government and the contractor prior to the Board's consideration of the case. Accordingly, this was not appealable anywhere.

consider any matters which were, or might have been, considered by the Tax Court in their review. Rushlight v. United States, 259 F. 2d 658 (C.A. 9th, 1958), certiorari denied, 359 U.S. 952; Sampson Motors, Inc. v. United States, 168 F. 2d 878 (C.A. 9th, 1948); Pownall v. United States, 159 F. 2d 73 (C.A. 9th, 1947), affirmed, 334 U.S. 742 (1948); United States v. Bonnell, 180 F. 2d 145 (C.A. 9th, 1950).[8/]

Nor can a litigant raise a constitutional objection to the renegotiation procedure. In Lichter v. United States, 334 U.S. 742 (1948) the Supreme Court held that the requirement to go to the Tax Court for a redetermination of excess profits accords a litigant procedural due process. And this Court in Spaulding v. Douglas Aircraft Co., 154 F. 2d 419 (C.A. 9th, 1946) held that the de novo redetermination of excess profits by the Tax Court had all the essentials of due process in spite of the lack of an appeal to a federal court and thus the finality of the Tax Court's decision as to the amount to be recaptured violated no constitutional right.

---

8/ In view of the statutory provision for the status to be accorded to an unappealed unilateral determination of the Renegotiation Board, the court in United States v. Scandia Mfg. Co., 101 F. Supp. 583 (N.J., 1952) held that even the defense of the statute of limitations may not, therefore, be presented in the District Court.

This exclusive jurisdiction of the Renegotiation Board and the Tax Court in renegotiation matters applies, as well, in bankruptcy proceedings. A Trustee in Bankruptcy is precluded under the clear terms of the Renegotiation Act from asserting any defense to a renegotiation claim that has already become final under the Act. His remedy, as is the case for others, is to participate before the Renegotiation Board and, if unsuccessful, to seek review in the Tax Court. See United States v. Paddock, 178 F. 2d 394, 399 (C.A. 5th, 1949), certiorari denied, 340 U.S. 813 (1950).

The only case cited by the appellant to support his attempt to relitigate the merits of the renegotiation claims in the bankruptcy proceedings, In the Matter of Pacific Automation Products, Inc., Debtors, 224 F. Supp. 995 (S.D. Cal., 1964), is unrelated to that issue. There the court considered the validity of the collection rights given to the United States by the Renegotiation Act--to collect directly from a debtor of the delinquent taxpayer--when confronted with the reprisement of the Bankruptcy Act, c. 541, 30 Stat. 544, as amended that all moneys owed the bankrupt be collected by the Trustee in Bankruptcy for the benefit of all the creditors. While placing the Bankruptcy Act and the Renegotiation Act constitutionally on the same footing, the court held that the necessity for uniformity and the generalized application of the Bankruptcy Act required placing its priority provisions ahead of specialized collection rights given by Congress under the Renegotiation Act.

Thus in the Pacific Products case the Government was attempting to circumvent the provisions of the Bankruptcy Act to obtain a priority as to the bankrupt's assets. Here in opposing a beneficiary of the bankrupt we are working within the provisions of the Bankruptcy Act to collect already finally adjudicated claims, claims which were established in the only tribunal having jurisdiction to consider their merits and which were properly presented for collection to the Trustee in Bankruptcy. Far from being interpreted, as appellant urges, to question the propriety of such a procedure, Pacific Products endorses it.

In short, we are doing precisely what Pacific Products tells us we must do and that is to collect our bills from the trustee and not to utilize the Renegotiation Act procedure for such collection after bankruptcy proceedings have been instituted.

B. The doctrine of laches is here inapplicable because of appellant's failure to demonstrate that the United States caused the lengthy delay in the enforcement of its rights and because, in any event, laches is no defense against a sovereign

The defense of laches raised by the appellant requires a specific showing of a lack of diligence by the party against whom the defense is raised as well as some prejudice to the party asserting the defense. Costello v. United States, 365 U.S. 265, 281-283 (1961); Gardner v. Panama R. Co., 342 U.S. 29, 31 (1951); Southern Pacific Co. v. Bogert, 250 U.S. 483, 488-490 (1919); Galliher v. Cadwell, 145 U.S. 368, 372 (1892). Neither has been

shown here. The appellant's sweeping and unsupported generalizations are an inadequate substitute for concrete proof of the Government's alleged misconduct.

The federal claims involved herein arose during the war years of 1944 and 1945. They were promptly and timely prosecuted. The tax claims against the bankrupt corporations were filed with the Trustee in Bankruptcy on December 18, 1946. (I-R. 87, 88.) The renegotiation claim against Communications Equipment was filed on January 29, 1947. (I-R. 89.) Since both of these dates are prior to the February 28, 1947 date of the corporations' adjudication of bankruptcy (I-R. 85), the filings were clearly timely. The renegotiation claim against Trans-Pacific was filed on July 3, 1947 (I-R. 90), well within the six-month limitation for the filing of such claims in bankruptcy.[9/]

After the filing of the claims, the matter of their validity and enforcement came under the control of the Trustee and the Referee in Bankruptcy. Absent the showing of any specific instance of how the Government delayed the proceedings, there can be no

---

9/ From 10 to 30 days following the adjudication of bankruptcy, the creditors hold their first meeting. Bankruptcy Act, supra, Section 55 (11 U.S.C. 1964 ed., Sec. 91(a)). Creditors then have six months from the date of this meeting within which to file their claims with the Trustee in Bankruptcy. Bankruptcy Act, supra, Section 57 (11 U.S.C. 1964 ed., Sec. 93(n)). Although the record herein does not indicate when the first meeting was held, since the Government's claim was filed less than six months after the adjudication of bankruptcy, it must have been timely.

basis for branding its claims as "stale." Once timely made, they do not become untimely during the course of litigation. Assuredly, the Government does not have to defend the twenty-year "time in process" of the instant bankruptcy proceedings.

In any event, the appellant cannot use the doctrine of laches against a sovereign. A long and distinguished line of Supreme Court cases dating back to the early days of our judicial system have held that the laches cannot be a defense against the United States. United States v. Summerlin, 310 U.S. 414, 416 (1940); Board of Comm'rs v. United States, 308 U.S. 343, 351 (1939); United States v. Thompson, 98 U.S. 486, 489 (1878); United States v. Knight, 14 Pet. 301 (1840); United States v. Kirkpatrick, 9 Wheat. 720, 735-737 (1824).[10/] The reasoning underlying this principle is, in the words of Justice Story, "to be found in the great public policy of preserving the public rights, revenues and property from injury and loss, by the negligence of public officials." United States v. Hoar, 26 Fed. Cas. 329, 330 (1821).

---

10/ Appellant's sole precedent to support its application of the laches doctrine against the Government, City of Los Angeles v. County of Los Angeles, 9 Cal. 2d 624 (1937), holds only that laches can be made a defense against municipality. (Br. 9.) But one certainly would not classify a municipality as a sovereign.

Consequently, the appellant's argument for reversal on the basis of laches against the Government must be rejected. For, even if the appellant had satisfied his burden of demonstrating some inexcusable delay caused by the Government to his prejudice, such a delay would be remediless.

## CONCLUSION

For the above stated reasons, the judgment of the District Court should be affirmed.

Respectfully submitted,

MITCHELL ROGOVIN,
Assistant Attorney General.

LEE A. JACKSON,
ROBERT J. CAMPBELL,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

Of Counsel:

WILLIAM M. BYRNE, JR.,
United States Attorney.

LOYAL E. KEIR,
Assistant United States Attorney.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Dated: 1st day of April, 1968.

Assistant United States Attorney